

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT

IN RE: RUTLAND FIRE CLAY CO.)

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CASE NO.: 99-11390
Chapter 11

P R O C E E D I N G S

taken on the 25th day of October, 1999, at
approximately 2:05 p.m., at the U.S.
District Court, Brattleboro, Vermont

REPORTED BY: Lisa Hindes-Moody, RPR

PRESIDING JUDGE: Hon. Robert L. Krechevsky

APPEARANCES:

RAYMOND OBUCHOWSKI, Esquire, on behalf of the
Debtor.

JOHN PREEFER, Esquire, on behalf of
the Official Tort Claimants' Committee.

KEVIN PURCELL, Esquire, U.S. Trustees' Office.

NANCY W. DAVIS, Esquire, on behalf of
Asbestos Claimants' Committee.

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1 THE CLERK: The next matter is
2 Case No.: 99-11390: Rutland Fire Clay
3 Company. This is a Motion by the Debtor for
4 an Interim Order Authorizing the Use of Cash
5 Collateral, Granting Additional or Replacement
6 Liens, and Authorizing Post-Petition Borrowing
7 Secured by Priority Liens on the Debtor's
8 Assets.

9 Also, an Application
10 Filed by the Debtor, an Interested Party;
11 Unofficial Tort Claimants' Committee, for
12 Order Pursuant to Section 105(a) of the
13 Bankruptcy Code Authorizing the Appointment of
14 Consultant and Payment of Compensation and
15 Reimbursement of Expenses to the Consultant in
16 Aid of Confirmation and Consummation of
17 Consensual Plan of Reorganization.

18 Also, a Motion by the
19 Debtor for Waiver of Claims' Bar Date for
20 Asbestos-Related Personal Injury Claimants;
21 for Modification of Notice of Commencement of
22 Case Including Section 341 Notice; for
23 Limitation of Service of the Notice of
24 Commencement of a Case Upon Asbestos
25 Claimants' Attorneys and For Waiver of

1 Separate Notice of Disputed Claims.

2 And a Motion by the
3 Debtor for an Order Limiting Notice for All
4 Matters in the Above-Captioned Proceeding; an
5 application filed by the interested party,
6 Unofficial Tort Claimants' Committee and the
7 debtor, for an order directing the appointment
8 of Richard Levy, Jr., Esquire, as legal
9 representative for future claimants; a motion
10 by the debtor for post-petition payment of
11 trade payables.

12 And a motion by the
13 debtor, Rutland Fire Clay Company, interested
14 party; Rutland, Inc., for an Order Allowing
15 Professionals to Draw Down Pre-Petition
16 Retainer for 60 Percent of Fees Earned Every
17 30 Days Without Prior Approval.

18 Please announce your
19 appearances.

20 ATTORNEY OBUCHOWSKI: Ray
21 Obuchowski on behalf of the debtor or the
22 debtors in possession.

23 ATTORNEY PURCELL: Kevin
24 Purcell, Office of the United States Trustee.
25 Good afternoon, Your Honor.

1 ATTORNEY PREEFER: John
2 Preefer, Your Honor, for the Official Tort
3 Claimants' Committee, and I would be raising
4 today my order for retention by the committee
5 which has now been formed.

6 ATTORNEY DAVIS: Nancy Worth
7 Davis, Chairman of the Official Asbestos
8 Claimants' Committee. Your Honor, I have
9 passed up to you today the motion for my
10 admission pro hac vice which I would hope you
11 could consider now before we begin.

12 ATTORNEY OBUCHOWSKI: Your
13 Honor, we filed or signed a motion for the
14 admission of Ms. Davis pro hac vice last
15 Friday. We also filed for Mr. Preefer a
16 similar motion pro hac vice for his
17 appearance, although, I do not have a copy of
18 that motion with me today. Mr. Preefer does
19 have one available for the Court, if
20 necessary.

21 THE COURT: I have received a
22 lot of papers. Okay, one from Ms. Davis. It
23 is my understanding that such a motion
24 requires that it be presented by a member, an
25 existing member of the district and that has

1 now been done through the signature of
2 Attorney Obuchowski?

3 ATTORNEY OBUCHOWSKI: That's
4 correct, Your Honor.

5 THE COURT: I also see in the
6 motion that there is a request that no local
7 counsel, it says, "Be acquainted," is that --

8 ATTORNEY DAVIS: I'm sorry,
9 "be required," Your Honor. Since I am the
10 chair of the committee which is represented by
11 Mr. Preefer, we will have local counsel in
12 this.

13 THE COURT: Well, does the
14 district court here require that an
15 out-of-state lawyer who is admitted have local
16 counsel?

17 ATTORNEY OBUCHOWSKI: Your
18 Honor, the District Court Rule does provide
19 for the requirement of association with local
20 counsel; however, the Court does have the
21 authority and within its rules to waive that
22 requirement when cause is shown.

23 We believe in this case,
24 Your Honor, that cause would be shown in view
25 of the type of case that's involved here, and

1 the status of where this case is going and has
2 already been.

3 THE COURT: Okay. That's not
4 a rule where I come from, but the rule does
5 require that any out-of-state lawyer maintain
6 a local office within the district for the
7 purpose of service of papers. In other words,
8 papers don't get sent out across the country.

9 So, that if Mr.
10 Obuchowski's office can be used for the
11 mailing of papers to Ms. Davis, it would
12 satisfy me.

13 ATTORNEY DAVIS: Yes, Your
14 Honor. I believe Mr. Obuchowski would be
15 willing to do that.

16 ATTORNEY OBUCHOWSKI: That
17 would be satisfactory with me.

18 THE COURT: You could use
19 somebody else if you have to.

20 ATTORNEY DAVIS: Oh, no thank
21 you, Your Honor.

22 THE COURT: All right. The
23 motion is granted. Just out of curiosity, is
24 there a fee that is to be paid?

25 ATTORNEY DAVIS: Your Honor,

1 again, we were reading the District Court
2 Rules which, in my practice, also apply to the
3 bankruptcy court as a division of the district
4 court, and I believe they did require a \$60
5 fee which I was prepared to pay.

6 THE COURT: Okay. Usually, it
7 says that, in the motion, they paid the fee.

8 ATTORNEY OBUCHOWSKI: Your
9 Honor, as matter of course at least in my kind
10 of practice, I have not been aware of that fee
11 being required by the bankruptcy court in the
12 past. So, for that reason, as to Mr.
13 Preefer's application, such a fee was not
14 tendered at the same time as well.

15 THE COURT: Okay. Well, we do
16 collect the fee because it is used by the
17 district and the bankruptcy court for public
18 purposes. How much is the fee?

19 ATTORNEY OBUCHOWSKI: \$60,
20 Your Honor.

21 THE COURT: 160?

22 ATTORNEY OBUCHOWSKI: 60.

23 THE COURT: 60. It is 25 in
24 Connecticut, so.

25 ATTORNEY DAVIS: I know.

1 THE COURT: Well, in any
2 event, all right, the order says this long
3 rule be waived, 83.2. If that's the rule that
4 requires a local office, that's not being
5 waived. It is only that you have to have a
6 local counsel with you all of the time, that's
7 waived.

8 ATTORNEY DAVIS: Thank you,
9 Your Honor. If would you like to cross out
10 the "not," I could live with that; "or will be
11 waived."

12 THE COURT: Well, at some
13 point, I don't want to complicate this more
14 than it has to be, Mr. Obuchowski, you should
15 file a statement saying that your office will
16 be the local office for Attorney Davis'
17 service of papers.

18 ATTORNEY OBUCHOWSKI: We would
19 be glad to do that, Your Honor.

20 THE COURT: Okay.

21 ATTORNEY DAVIS: Thank you,
22 Your Honor.

23 THE COURT: And while we are
24 on that, then, the other one -- when I say
25 "other one," -- is involving Mr. Preefer.

1 ATTORNEY PREEFER: Yes, Your
2 Honor.

3 THE COURT: And here the order
4 that is submitted does not say for whom you
5 are appearing.

6 ATTORNEY PREEFER: I'm
7 appearing -- well, I am now appearing for the
8 Official Tort Claimants' committee, I believe
9 that's the designation.

10 ATTORNEY PURCELL: Kevin
11 Purcell. Friday I formed, by telephone
12 conference call, the Asbestos Tort Claimants'
13 Committee. We solicited both trade creditors
14 and the 20 -- the attorneys representing the
15 20 largest in number of the asbestos tort
16 claimants in this case.

17 I had a response from two
18 trade creditors. They both declined to be on
19 the committee. I had response, six positive
20 responses from attorneys representing asbestos
21 tort claimants. And I contacted them and we
22 had the meeting by telephone conference call,
23 and I formed the committee on Friday in the
24 Rutland, Inc., case.

25 I had one positive

1 response from a trade creditor and that was
2 the only response that I had there. So, I did
3 not form a committee in that case. And that
4 -- so, the name of the committee is, The
5 Asbestos Tort Claimants' Committee and that's
6 what Mr. Preefer would like to represent.

7 THE COURT: Okay. Do I need
8 -- is there a Motion to Approve?

9 ATTORNEY PREEFER: My
10 retention.

11 THE COURT: -- Mr. Preefer as
12 counsel for the committee?

13 ATTORNEY PREEFER: Yes, I have
14 an order and application with me, Your Honor,
15 which Mr. Purcell has reviewed and signed off
16 on. If I may hand it up, Your Honor.

17 THE COURT: You may.

18 ATTORNEY PREEFER: Your Honor,
19 let me bring to the Court's attention, and
20 this has been discussed with Mr. Purcell and
21 he has signed off with that, that order does
22 provide for nunc pro tunc retention until
23 October 13th when we filed the case because
24 process required reconfirmation of the
25 pre-petition committee and the need for those

1 days to complete that process, but the work
2 was begun immediately because the committee
3 existed.

4 Mr. Purcell in
5 discussions with me, I believe I can speak for
6 him, has agreed that these are circumstances
7 that warrant such a retention.

8 THE COURT: You wish to
9 respond or agree?

10 ATTORNEY PURCELL: I agree.

11 THE COURT: Okay.

12 ATTORNEY PURCELL: And on my
13 analysis of carrying limited partnership to
14 second circuit decision, it doesn't have a F
15 3rd cite yet. It only has a West Law cite
16 that I was able to find. I think it was
17 August, end of August 1999. Basically says,
18 that that, the requirement for nunc pro tunc
19 appointment in a 327(a) case is, that the
20 appointment could have been entered at the
21 time that the person is asking for the
22 appointment. And there was some showing of
23 extraordinary circumstances. And I think that
24 this is the extraordinary circumstance,
25 Judge. We did solicitation as fast as we

1 possibly could, got it out, got responses, and
2 formed a committee, as is my office's
3 obligation.

4 Now, that committee which
5 is the same members as the pre-petition
6 committee minus one -- it has six, this one
7 has six -- they were all on the prior
8 committee and has one less than the
9 pre-petition committee. Since they are really
10 very coequal, I thought it would be most
11 unfair to deny Mr. Preefer the appointment
12 back to nunc pro tunc. It is an
13 impossibility, that's the extraordinary
14 circumstance; the committee wasn't formed
15 until today -- Friday.

16 THE COURT: Well, I accept
17 that. Today is the 25th. All right. So, the
18 Court is approving the retention of Attorney
19 Preefer as counsel for the committee. And at
20 the same time the Court admits Attorney
21 Preefer to practice. Again, you'll need a
22 local address.

23 ATTORNEY PREEFER: Mr.
24 Obuchowski, may I ask you to also extend the
25 courtesy of accepting service?

1 ATTORNEY OBUCHOWSKI: We would
2 have no problem with that, Your Honor.

3 THE COURT: Okay. And you
4 will follow up, Mr. Obuchowski, with something
5 for the clerk's office so they can put in your
6 address for Attorney Preefer when they send
7 out papers?

8 ATTORNEY OBUCHOWSKI:
9 Certainly, Your Honor, and that would be my
10 address in addition to their own addresses?

11 THE COURT: That's right, and
12 you have the obligation to pass that on to
13 them.

14 ATTORNEY OBUCHOWSKI: Correct,
15 just so the matrix is clear, they will have
16 their own addresses as well for direct mail.

17 THE COURT: No, they will not,
18 at least in my court we do not send mail out
19 of state. The rules require that every
20 out-of-state lawyer have a local office,
21 that's the reason, so that you don't have to
22 send stuff out of state.

23 ATTORNEY OBUCHOWSKI: We'll
24 see that it is taken care of.

25 THE COURT: Okay. Now,

1 otherwise, it would just be duplicative
2 mailings for no purpose. But it is well that
3 you clarified that. All right.

4 The next matter, at least
5 the first matter on the calendar now, is the
6 borrowing order. And I did have an
7 opportunity to look at that. And I have some
8 comments on that proposed order. To start
9 with, I prefer in these orders that, instead
10 of the language, "it appearing," so that it is
11 as if the Court were making findings -- the
12 Court has heard no testimony, and has no
13 record on which to make any findings, so, I
14 would like the language to read, "The parties
15 represent" and cross out, "It appearing,"
16 wherever it appears in all of the paragraphs
17 before you get to the ordered paragraph.

18 ATTORNEY OBUCHOWSKI: Your
19 Honor, if I may; I believe the way the posture
20 we are in today is, there is a single-page
21 interim order rather than the multi-page.

22 THE COURT: Not this thing?

23 ATTORNEY OBUCHOWSKI: I
24 believe that's the final order that would be
25 set for November 16th. Based upon this

1 Court's instructions, we have a single-page
2 order today which is just a simple interim
3 order authorizing use of cash collateral
4 pending the final hearing. And this
5 single-page order, essentially, just provides
6 for the temporary use until final hearing on
7 November 16th.

8 Although, I would be most
9 curious as to the Court's comments on the
10 final order so we can certainly try to make
11 sure that as of the 16th we conform with what
12 the Court's requests are.

13 THE COURT: Okay. Now, the
14 secured creditor is whom?

15 ATTORNEY OBUCHOWSKI: Is
16 Mercantile Bank of Illinois, Your Honor.

17 THE COURT: Is counsel for
18 that bank here?

19 ATTORNEY OBUCHOWSKI: Counsel
20 is not present. I spoke with counsel, in
21 fact, on my travels here today, Your Honor.
22 And he, in fact, was forwarding by fax to my
23 office a letter of consent, continued consent
24 to use of cash collateral. The bank is in
25 agreement for use of cash collateral in this

1 case.

2 And in the interim order
3 that the Court has before it I do note that
4 there is a typographical reflecting that, "The
5 matter came before the Court for preliminary
6 hearing on October 13th," whereas, that should
7 be the "25th."

8 THE COURT: Does the bank
9 intend that its cash collateral can be used
10 and it not receive a post-petition lien on the
11 collateral that occurs post petition?

12 ATTORNEY OBUCHOWSKI: That is
13 the basis in the final order, Your Honor.

14 THE COURT: But, in the
15 meantime, they get nothing?

16 ATTORNEY OBUCHOWSKI: In the
17 meantime, they are getting nothing. The final
18 order provides that their lien would relate
19 back to the date of petition for any post
20 petition, collateral for any post-petition
21 borrowings and for the continued use of
22 post-petition collateral and pre-petition
23 collateral.

24 THE COURT: Okay. I don't
25 require, I am not requiring that as a

1 condition of the order that it not receive
2 security for what it is lending.

3 ATTORNEY OBUCHOWSKI: Well,
4 Your Honor, as of the date of filing the
5 borrowing had, in fact, capped on the line of
6 credit at \$750,000. So, there is no
7 additional borrowing at the present time. The
8 collateral itself provided sufficient equity
9 cushion, so that they are fully collateralized
10 at the present time and even encompassing any
11 kind of changes in their collateral position
12 between now and final hearing.

13 THE COURT: Well, the language
14 here, it says, in the, starting at the end of
15 the fourth line: "And the bank having filed a
16 stipulated order showing that they have
17 reached an agreement on the debtor motion."
18 Well, a stipulated -- an order is only what
19 the Court entered.

20 ATTORNEY OBUCHOWSKI: I
21 understand that, Your Honor.

22 THE COURT: So, what's the
23 significance of the bank having signed, quote,
24 "a stipulated order," which is nothing that
25 I've entered?

1 ATTORNEY OBUCHOWSKI: Merely
2 as to the status of their consent, Your Honor,
3 and to the provision of post-petition liens
4 for going forward.

5 THE COURT: But they are
6 getting none.

7 ATTORNEY OBUCHOWSKI: At the
8 present time due to the fact that we are going
9 through the series of hearings until we have a
10 final hearing on this matter. Again, looking
11 at Rule 4001 as to having the preliminary
12 hearing today, this motion, the stipulated
13 order, the interim order, single-page order
14 have all been served up on all parties that we
15 had as far as all of the 160 or 120 firms for
16 the plaintiffs' firms, the bank.

17 THE COURT: Okay. I think it
18 is better for the bank, I mean fairer, that
19 the interim, the order that you submitted
20 called "interim order," it should be
21 preliminary, I think, order. It should be the
22 order entered that carries the situation until
23 the time of the final hearing and without
24 requiring, as this would, the bank to get no
25 security for any use of its collateral.

1 ATTORNEY OBUCHOWSKI: Your
2 Honor, we would have no objection to that. I
3 don't --

4 THE COURT: Okay. And I have
5 the document here, so.

6 ATTORNEY PREEFER: Your Honor,
7 I think that while there might have been
8 different ways to do it, this has been noticed
9 to all creditors and parties in interest on a
10 particular format which grants just the use of
11 cash collateral until final hearing.

12 THE COURT: Well, I am going
13 to have to take out the provision about
14 somebody having signed a stipulated order
15 because that has no effect.

16 ATTORNEY PREEFER: What it is,
17 Your Honor -- and I think what I would ask the
18 Court to consider inserting, with Mr.
19 Obuchowski's agreement, is the word, "proposed
20 stipulated order," because that's what it is.

21 THE COURT: What does that got
22 to do -- why should I reference that in my
23 order?

24 ATTORNEY PREEFER: Well, then,
25 take it out. I think the fact is, for the

1 time being, the bank has agreed to the use of
2 this cash collateral on a certain basis, and
3 we should go forward with that agreement.

4 THE COURT: And you think the
5 agreement is, that they get no security for --

6 ATTORNEY PREEFER: No, I
7 think, actually, whether the order says it or
8 not, to the extent they have a valid lien it
9 --

10 THE COURT: It doesn't, that's
11 the whole point of why the code -- why you
12 have to go through this procedure. The code
13 says, any bank that has a lien on all assets,
14 after-acquired assets, that lien stops at the
15 present time of the filing of the petition as
16 to after-acquired assets. And if the bank
17 wants to continue lending, which is allowing
18 the use of its cash collateral, it needs an
19 order saying, to the extent that its
20 collateral is used, it can receive and should
21 receive a lien on all of the assets of the
22 debtor. And I do that all of the time.

23 So, let me just suggest
24 some of the problems I have, and they are
25 technical, with the long form order. First,

1 again, since I don't conduct a hearing to find
2 out all of the facts alleged here, it will
3 start out on the first page by saying, "And
4 the parties represent." And when we get to
5 Page 3 in the order, "It is hereby ordered
6 that on a preliminary order the debtor is
7 allowed to use cash collateral only to the
8 extent to prevent immediate and irreparable
9 harm," and I always insert that in these
10 preliminary orders, language of the rule, and,
11 so, I would insert that somewhere in paragraph
12 one or in paragraph two.

13 Paragraph four of this
14 order, which repeats what the Bankruptcy Code
15 says and says that's what the Bankruptcy Code
16 says, I find unnecessary to put into an
17 order,. But what the Bankruptcy Code says is
18 there, and you don't have to repeat what's in
19 the code and orders. All it does is, makes
20 them more cumbersome than they have to be in
21 the first place. So, I would take out
22 paragraph four.

23 In paragraph seven there
24 is a requirement that any state court officer,
25 recording officer must do certain things. I

1 don't think it is appropriate that the
2 bankruptcy court direct a state court officer
3 to do anything. Statutes require what that
4 court officer -- not court officer, state
5 officer does. So, I would take out the
6 provision in paragraph seven that makes that
7 an order of the court, this court.

8 In paragraph 12 it refers
9 to the fact that the bank doesn't want to have
10 what we call 506(c) expenses assessed against
11 the collateral. Well, the bank may say that
12 it doesn't consent, but I don't order that I
13 am not going to follow the Bankruptcy Code if,
14 in fact, such expenses can be assessed.

15 ATTORNEY PREEFER: Your Honor,
16 let me bring to your attention that the second
17 part of paragraph 12 contains a provision that
18 during a Chapter 11 the bank, in effect, is
19 consenting to the debtor's use of cash
20 collateral to pay professional expenses. I
21 agree that it does not address post conversion
22 if that occurred, but this is a substantial
23 modification of the 506(c) to begin with.

24 THE COURT: Well, I don't
25 consider it a 506(c) issue, but this carve out

1 -- I call these carve outs -- doesn't address
2 the main carve out which is, that
3 post-petition employees' wages have to be
4 paid. And if a bank, post petition, has to
5 foreclose on its collateral, the employees
6 have to be paid post petition and, as a carve
7 out for that, and it is not in here and I
8 require that.

9 ATTORNEY OBUCHOWSKI: Your
10 Honor, if paragraph two -- if I understand the
11 Court's direction, we should make specific
12 provision for employee wages.

13 THE COURT: We are talking
14 about paragraph 12.

15 ATTORNEY OBUCHOWSKI: I'm
16 sorry if I misspoke, paragraph 12.

17 THE COURT: Correct.

18 ATTORNEY OBUCHOWSKI: Other
19 than that --

20 THE COURT: Other than that, I
21 will not enter an order that says that I will
22 never assess against collateral those things
23 that the Bankruptcy Code says I may under
24 Section 506. This paragraph, in effect, asks
25 for advocacy of the Court responsibility,

1 and I don't do that. So, that should be out.

2 And there should be a
3 separate paragraph for the carve out for the
4 liens that the bank will get as a result of
5 its post petition use of cash collateral.
6 Likewise, in paragraph 14, there is an order
7 that says that the Court has to advocate its
8 responsibilities concerning the allowance of
9 other liens on the collateral. If it is
10 appropriate, the Court is authorized to do so
11 by the code, and I don't sign orders that say
12 I will not exercise those powers. So, that
13 should go out, go out.

14 Finally, in paragraph 19
15 the provision provides that the bank's
16 reasonable fees, legal fees and costs can be
17 assessed and added to its debt, it says, "As
18 may be allowed pursuant to Section 11 USC 506"
19 which is fine. That's what the section says.
20 But then it goes on to say, "Or as may be
21 agreed by the parties." Well, the parties
22 have no authority to agree to a creditors'
23 debt unless approved by the Court. So, that,
24 "As may be agreed by the parties," should go
25 out. In fact, the whole section should go

1 out. The code says what it says. And there
2 is no need to repeat it in the papers.

3 So, in sum, what I
4 suggest is that, Mr. Obuchowski, if your
5 office was the one who, in connection with
6 counsel for the bank, drafted this order, that
7 you redraft it in accordance with my comments
8 and let it be the preliminary order and then,
9 presumably, there will be no problem also at
10 the time of the final hearing.

11 ATTORNEY OBUCHOWSKI: I would
12 be glad to do that, Your Honor. We would have
13 that to you presumably, roughly, by midweek.

14 THE COURT: Whenever I am
15 approving, in other words, the use of cash
16 collateral subject to the conditions that have
17 been put on the record.

18 ATTORNEY OBUCHOWSKI: Thank
19 you.

20 THE COURT: And the granting
21 of a lien to the bank in return for use of its
22 post-petition collateral, use of post-petition
23 collateral.

24 ATTORNEY OBUCHOWSKI: Thank
25 you.

1 THE COURT: Okay. The next
2 motion is: Motion for Appointment of a Legal
3 Representative. I might say, I have not
4 looked at any other orders except these, or
5 motions, so, you may proceed.

6 ATTORNEY OBUCHOWSKI: Your
7 Honor, we seek the appointment of a legal
8 representative for the future claimants in
9 this case. Essentially, Your Honor, under
10 1109 1105 we seek this appointment in that the
11 future claimants, having a legal
12 representative for them, is the only effective
13 way that we are able to address the future
14 claimants' claims in the preparation of the
15 disclosure statement and plan, although, the
16 parties have been working together --

17 THE COURT: Excuse me, I am
18 looking for that. You may proceed now.

19 ATTORNEY OBUCHOWSKI:
20 Although, the debtor and the representatives
21 of the seven largest, seven firms representing
22 the largest numbers of asbestos claims have
23 been working together toward a consensual
24 claim, neither party really represents the
25 interest of the future claimants. And,

1 although, the debtor has a fiduciary duty to
2 try to provide for those, the prompt
3 appointment of a legal representative as
4 required by 524(g) is necessary in this case
5 in order for us to proceed with timely filings
6 of notice and disclosure statement and plan.

7 THE COURT: 524(g).

8 ATTORNEY OBUCHOWSKI: That's
9 correct, Your Honor.

10 THE COURT: Can you tell me
11 which part of (g)?

12 ATTORNEY PREEFER: Your Honor,
13 it is 524(g) and (h) and in (g), it is (g)4B,
14 sub part little (i). You need to read the
15 part B and sub part (i) together. What it
16 refers to is, that the injunction that
17 channels the claims to the trust and protects
18 the future debtor emerging from bankruptcy
19 from unknown asbestos claims that arise after
20 confirmation may only be the subject of the
21 injunction that creates a viable
22 post-confirmation debtor if a legal
23 representative representing those interests of
24 pooled demands is appointed in the case,
25 something like a guardian ad litem.

1 THE COURT: Why is it
2 necessary now rather than when a plan is being
3 confirmed?

4 ATTORNEY PREEFER: Because,
5 well, I think you need to do it when the plan
6 is in the process of being prosecuted and we
7 are on that edge. We already have the draft
8 plan, Creditors' Trust and Asbestos
9 Procedures, which are now being circulated for
10 review, comment, and approval.

11 The legal representative
12 has an essential interest in those documents
13 because that's his job, to make sure they
14 reflect and protect the interests of those
15 demands, the unknowns. So, his appointment at
16 this stage, when we are ready to move forward
17 with the plan, is really a critical moment.

18 THE COURT: The section
19 doesn't otherwise indicate when the
20 appointment of such a person is appropriate?

21 ATTORNEY PREEFER: No, it
22 doesn't, Your Honor. Quite frankly,
23 historically in most of these more recent
24 asbestos cases, once the consent of a legal
25 representative became imbedded, because it was

1 not until 1994, -- and before that there were
2 cases where you argued over you needed one --
3 but once this became embedded, I think the
4 practice has been, generally, is to appoint
5 the legal representative early on so that he
6 has an integral part in the process that leads
7 to a plan that protects those interests.
8 Because he shouldn't come in at the last
9 moment merely to bless the process, but he
10 should be part of the process itself to ensure
11 that it has been done properly.

12 THE COURT: All right. Just
13 looking at the paragraph which limits the
14 liability of the legal representative, is that
15 a common provision, paragraph 16(e) on Page
16 11?

17 ATTORNEY PREEFER: Your Honor,
18 these are provisions that were utilized in a
19 case I was heavily involved in, Keene
20 Corporation (phonetically) in the Southern
21 District of New York before Judge Bernstein.
22 (Phonetically). We view these provisions as
23 appropriate because we anticipate the legal
24 representative will most likely serve without
25 counsel and will act as a fiduciary but not

1 incurring the additional costs of counsel.

2 I would also like to
3 point out that Mr. Levy, who is the person
4 we've nominated, is here today in court and
5 you may wish to inquire of him, if you care.
6 We are comfortable that these provisions are
7 appropriate in the circumstances we are
8 asking, but I cannot tell you the
9 approximately 20 cases that those provisions
10 have appeared in, most of those cases or
11 many. As I say, they did appear specifically
12 in the Keene Corporation. I cannot address
13 the other cases.

14 THE COURT: Well, Mr. Levy, is
15 that the way you pronounce your name?

16 ATTORNEY LEVY: Yes, it is,
17 Your Honor.

18 THE COURT: You have required
19 this provision. You know what provision we
20 are talking about?

21 ATTORNEY LEVY: Your Honor, I
22 have not had a chance to look at the order in
23 maybe a week. Can I have a moment, Your
24 Honor? When I was approached and ask if I
25 would be interested in this assignment, I

1 indicated that I would and that I would ask
2 for what I understood to be the ordinary and
3 customary provisions, this being one of them.

4 Again, from my experience
5 as, well, having represented in part the
6 Official Committee of the Unsecured Creditors
7 in the Keene case, it is my understanding,
8 this is a ordinary type of provision in this
9 instance, and I would prefer, obviously, that
10 that kind of clause be included particularly
11 since it is our expectation that I would serve
12 without counsel unless circumstances change in
13 the case going forward.

14 THE COURT: Are you a lawyer?

15 ATTORNEY LEVY: I am, Your
16 Honor. I am admitted to a number of courts.
17 I, in fact, have appeared before Your Honor in
18 the District of Connecticut many years ago in
19 the Century Brass case. I am admitted in New
20 York, Your Honor, which is my home district,
21 in the federal and state court and in a number
22 of other federal and state courts.

23 THE COURT: Position of the
24 U.S. Trustee Office?

25 ATTORNEY PURCELL: Your Honor,

1 the Bankruptcy Code is very clear when it
2 requires my office to appoint, such as for
3 committees, trustees, 1104 trustees. The 524
4 Section that we are talking about, I think it
5 says -- well, (g)4B, (g)4B(i) clearly says,
6 the Court shall appoint. I have no objection
7 to the Court appointing Mr. Levy.

8 THE COURT: Well, really, the
9 question I have is, all other officers,
10 professionals that the court appoints in every
11 instance, whether or not there is going to be
12 liability from their actions, depends on the
13 law. I have never put in when any attorney or
14 appraiser, or whatever you can think of as a
15 professional, has been appointed saying, you
16 are not going to be liable if you mess up
17 unless it is gross. I mean, I don't say that
18 to trustees when they get appointed; I don't
19 know why I should do it here. There is a
20 certain protection that any court officer has
21 from the exercise of that court officer's
22 judgment. I am going to take it out.

23 ATTORNEY LEVY: Your Honor, I
24 have no objection. I agree, to the extent I
25 serve as a court-appointed officer, I share --

1 I enjoy, I say, certain protections, and I am
2 prepared to stand on that.

3 THE COURT: Thank you. All
4 right. Well, that's in the application. I
5 don't know if it is in the motion or not.

6 ATTORNEY PREEFER: It is the
7 last paragraph in the order, so it should be
8 struck from the order.

9 THE COURT: Okay. Do you have
10 a local office, Mr. Levy?

11 ATTORNEY LEVY: I do not, Your
12 Honor. It is my intention to become admitted
13 as a full-fledged member of the District of
14 Vermont; I do satisfy the requirements, and it
15 is my understanding, under the local district
16 court, that would obviate the need for local
17 counsel or a local office.

18 THE COURT: I doubt that.

19 ATTORNEY LEVY: Your Honor, I
20 have the rule.

21 THE COURT: Okay. The reason
22 I say I doubt it, it is not because I am
23 familiar with Vermont, but I know in
24 Connecticut, if you are out of state and you
25 get admitted, you have to have a local

1 office. You can't be a member and practice in
2 Connecticut with an office in San Francisco.

3 ATTORNEY LEVY: Interestingly,
4 Your Honor, I thought the same would be true
5 here. When I looked at Rule Section 83.2 of
6 the District Court Rule, it provides that:

7 "Any attorney of the Bar of the State of
8 Vermont or any attorney of the bar of any
9 federal district court in the first or second
10 circuits whose professional character is good
11 and follows the procedures listed below may be
12 admitted to practice the procedures listed
13 below other than filling out forms, taking an
14 oath, paying a check and submitting the
15 application form." It does not make any
16 provision for the requirement of a local
17 office or local counsel.

18 THE COURT: Okay.

19 ATTORNEY LEVY: If the Court
20 would prefer me to have a local office, I
21 would, again, --

22 THE COURT: No, I am not going
23 to add to the local rules but --

24 ATTORNEY LEVY: Your Honor, in
25 the meantime pending my submission of formal

1 application papers, may I again avail myself,
2 as with the other counsel, with Mr.
3 Obuchowski's goodwill --

4 ATTORNEY OBUCHOWSKI: We would
5 have no problem with that, Your Honor, just
6 call us Mailbox, Etcetera.

7 THE COURT: Okay. Mr.
8 Purcell, you are aware that this application
9 calls for a post-petition retainer of \$7,500.

10 ATTORNEY PURCELL: Yes, I am,
11 Your Honor. I have no objection to that.

12 THE COURT: All right. I'll
13 take out the last paragraph.

14 ATTORNEY LEVY: Your Honor, I
15 understand that the retainer is subject to
16 Your Honor's allowing fee applications. We
17 will not draw against it subject to any
18 further court order.

19 THE COURT: Okay. I
20 understand that's the practice in Vermont.

21 ATTORNEY LEVY: Thank you,
22 Your Honor.

23 THE COURT: The motion is
24 granted. Whom did you represent in Century
25 Brass?

1 ATTORNEY LEVY: Your Honor, I
2 was affiliated with the firm of Goove, Market
3 & Pearce. (Phonetically.) You may recall, we
4 represented the Official Representative of a
5 -- excuse me, the Official Representative of
6 Retired Employees that Your Honor appointed
7 after the litigation before the second
8 circuit.

9 THE COURT: After I was
10 reversed.

11 ATTORNEY LEVY: Yes, Your
12 Honor.

13 THE COURT: Okay.

14 ATTORNEY LEVY: Sorry about
15 that, Your Honor.

16 THE COURT: Okay. Okay.
17 Next. Okay.

18 ATTORNEY OBUCHOWSKI: Your
19 Honor, the next matter on is the application
20 for the appointment of a consultant, Sylvester
21 Miniter, under Section 105(a). Again, the
22 point of the seeking the appointment of Mr.
23 Miniter as a consultant -- and this has been a
24 joint application by myself and Mr. Preefer on
25 behalf, at that point in time counsel to the

1 Unofficial Tort Claimants' Committee, now the
2 Official Tort Claimants' Committee -- is, that
3 the consultant who would be at this point the
4 designee trustee for the Asbestos Trust to be
5 created by the plan of reorganizing is to
6 involve the consultant or the proposed trustee
7 early on in the development of those documents
8 rather than to have the trust created by
9 counsel and committee at this time with
10 subsequent changes that have arisen through
11 past experiences that Mr. Preefer has had in
12 these types of cases.

13 For those purposes as
14 well, the consultant in this instance has been
15 very helpful in instructing the committee
16 relative to issues relative to liability of
17 the debtor in the proceeding even with this
18 type of reorganization. The purpose of the
19 consultant, again, is to obviate the necessity
20 to reinvent the wheel once -- after a trust is
21 created for him as trustee to review and seek
22 modification. The purpose, again, is to make
23 the trust move more smoothly and the vehicle
24 to get it there, the plan of reorganization,
25 to work in a capacity, to work smoothly to

1 create that trust but in a very quick fashion.

2 ATTORNEY PREEFER: Your Honor,
3 I would add, that this is a technique that
4 we've used in many other asbestos cases, three
5 of which I have been associated with: The
6 Keene Corporation, Rockwell Manufacturing in
7 Alabama and MH Dittrich Company in Chicago,
8 and I believe several others we have found it
9 particularly helpful in having a person who
10 has been designated by the parties to become
11 the trustee of the creditors' trust under the
12 plan to be involved with the process, so that
13 when we finish the process, we have a trust
14 and governing documents that the trustee is
15 ready to step into and start up on day one.

16 And, in fact, the parties
17 I dealt with in one of the cases, in the Keene
18 case, some of those parties and professionals
19 had had an experience in an earlier asbestos
20 case where they had not yet refined this
21 concept and had not had consultants, and they
22 found that when they had confirmed the case,
23 the consultant -- excuse me, the trustee who
24 then first began an involvement hired new
25 counsel, and they went and revised a whole set

1 of the documents and changed things
2 substantially because, as might be expected,
3 the trustee and his counsel had their own
4 views about what was acceptable.

5 So, in many of these
6 cases the experience of the parties' has been,
7 that by involving the person that they have
8 identified as their future candidate for
9 trustee, we have made a seamless transition
10 through the case and into the trust where we
11 eliminated any possible renewed expense to go
12 revisit what one group of people worked on and
13 then a new party stepped in to. It is a great
14 cost savings, and it is a very effective
15 method to have a company transition into the
16 trust without any disruption. I cannot
17 recommend it more strongly.

18 And Mr. Miniter, who is
19 also here and sits to my left, is our
20 candidate. He has been involved for three or
21 four months with management, and they have
22 been more than satisfied with his future
23 role. There has been a good rapport
24 established, and I think this will hold very
25 well for the future, and I would urge the

1 Court to consider his application.

2 ATTORNEY OBUCHOWSKI: Your
3 Honor, if I may direct the Court to the order,
4 the order in -- the second order made
5 reference that the appointment will be nunc
6 pro tunc, and I understand the Court's concern
7 with those type of appointments. Mr. Miniter
8 was here at the initial filing and introduced
9 to the Court in chambers on the 13th of
10 October. We have felt that his employment
11 here is integral to the success of this case.
12 And one of the concerns -- and I know that the
13 Court had set that date, that it is this
14 Court's, Your Honor's position, that the
15 employment is effective as of the date of the
16 filing of that application.

17 I believe one of the
18 concerns that was raised, and we want to make
19 sure, clear for the record, is that in the
20 event at a subsequent time, Your Honor, that a
21 new judge is appointed in this district and
22 whether you will continue to sit on this
23 matter or be relieved from your duties to come
24 up here to Vermont, that there was no question
25 as to the timing and the effectiveness of that

1 employment. I know that was a matter of
2 concern with both the committee and Mr.
3 Miniter.

4 The second point I also
5 direct the Court's attention to in the order,
6 and perhaps Mr. Preefer can address this from
7 his discussion with Mr. Miniter, was the
8 position relative to submitting invoices and
9 drawdowns.

10 ATTORNEY PREEFER: That
11 paragraph should be deleted. It is on page
12 3. The first ordered paragraph will be
13 struck. I suppose I can jump ahead for a
14 moment. It related to a procedure in
15 connection with a motion that debtor's counsel
16 filed to permit drawdowns against retainers.
17 Your Honor may be aware, that the U.S.
18 Trustee's Office had objected, and after
19 discussions, we have all agreed to withdraw
20 that motion and this provision which would
21 relate to it will be struck and payments will
22 be made on applications. That whole paragraph
23 should be struck.

24 THE COURT: The only provision
25 authorizing this kind of appointment is

1 Section 105.

2 ATTORNEY PREEFER: Yes, Your
3 Honor. This appointment and this application,
4 in our opinion, is a creature of 105. It is
5 not specifically addressed in the other
6 section, although, Mr. Purcell would suggest
7 that 327 may also lend itself to it. It is
8 the provision that we have used in the other
9 cases. It is also, more importantly from my
10 view, the provision most applicable.

11 Mr. Miniter as
12 consultant, in our view and as, again, we did
13 in some of these other cases, is not a
14 representative of the parties. We view him as
15 an independent fiduciary who is involved with
16 the process and had anticipation of his formal
17 appointment under the plan as the trustee.
18 And, so, we take the view that 105 is the most
19 appropriate provision because it appoints him
20 in the case without aligning him and this
21 order provides that method. He is not aligned
22 with the debtor or the committee.

23 It is possible to view
24 him if one wanted to -- and Mr. Purcell
25 engaged in this discussion -- as appointed as

1 a consultant to, for example, the committee.
2 I believe that the best appointment, the
3 clearest designation of his functions in the
4 case and his future appointment is as
5 consultant under 105 and that is what I
6 recommend be done. I think Mr. Purcell wanted
7 to address this, so let me turn it over to
8 him.

9 ATTORNEY PURCELL: Thank you,
10 Mr. Preefer. This is a square peg in a round
11 hole, putting no fine point on it, but so is
12 this case, and I think all cases under 524(g)
13 are. 524(g) gives you a nice road map, very
14 detailed one, on how to get from Point A to
15 Point B for the asbestos claimants. It
16 doesn't refine a lot of the other parts of the
17 code that would normally intermesh in a
18 Chapter 11 case.

19 We've been, internally in
20 my office, we have been kicking this idea
21 around on the best way to proceed on this, and
22 if the Court agrees with Mr. Preefer that the
23 trustee should be beyond the beck and call of
24 either side --

25 THE COURT: You say trustee,

1 --

2 ATTORNEY PREEFER: Consultant.

3 ATTORNEY PURCELL: Consultant,

4 I'm sorry.

5 THE COURT: -- consultant.

6 ATTORNEY PURCELL: If the
7 consultant should be in anticipation that his
8 role as trustee should be on the beck and call
9 of either of the sides, then 105 is the only
10 section that applies. If the Court doesn't
11 agree with that argument, I think 327(a)
12 does. And it is one of those tough calls and
13 I think in a way -- since this is, what, one
14 of the 19 or 20 such case in the United States
15 -- I think we are still kind of inventing the
16 wheel and making it up as we go along.

17 My preference always is
18 to have professionals whose marching orders
19 are very, very clear. Here, this professional
20 is being brought into the case with a marching
21 order that will take effect after confirmation
22 to be a neutral party. And 105, therefore,
23 doesn't really bother me. And I think that
24 maybe that is --

25 THE COURT: You say, "A

1 neutral party." Why isn't this, a
2 professional being retained by the debtor in
3 possession?

4 ATTORNEY PREEFER: Your Honor,
5 the reason that a neutral party is probably
6 the keyword in the structure of this motion,
7 the trustee of the trust, and why I think it
8 is most desirable is, because he is a party
9 who comes unaffiliated with the debtor or the
10 committee. I think this is consensual as much
11 as anything.

12 In this case where the
13 parties are largely in agreement one can say
14 that, without disputes, you could call them
15 anything that works, because we are not
16 fighting with each other. But in the pure
17 theory of what we are really advancing, he is
18 a neutral party who is not affiliated with the
19 debtor who the asbestos claimants are suing,
20 and he is not affiliated with the company
21 owing allegiance to the lawyer, law firm,
22 representatives of the plaintiff, asbestos
23 creditors. He is truly a party whose job is
24 to be an independent person who will assume
25 the trust and discharge independent fiduciary

1 duties.

2 So, for that reason --
3 may be linguistics but linguistics sometimes
4 convey important symbols and messages and here
5 the message we ask to convey to the Court, to
6 the claimants, to the future law firm and to
7 the future debtor is, that this party is not a
8 creature of anybody who has got a direct
9 interest. He is an independent party who will
10 serve the proper interest of all and that's
11 why he is called consultant under 105 and not
12 committee representative, not a debtor
13 representative, not a debtor adviser, not a
14 committee adviser. We don't view him as
15 that. We view him as that independent party
16 who will bring his intelligence and judgment
17 to the problems.

18 ATTORNEY OBUCHOWSKI: Your
19 Honor, I think that, also, it comes into more
20 focus when you realize that the purpose of a
21 consultant or future trustee is, that the
22 company itself and the stock under 524(g) will
23 be placed into that trust. So he is,
24 effectively, in the nature of the fiduciary
25 for the future owner of the debtor in

1 possession. I think from that capacity, I
2 think that is very consistent with what Mr.
3 Preefer is saying. He is trying to maintain
4 his independence of not being employed by the
5 debtor or not being employed by the committee
6 because he has his own interest of where the
7 trust sits in the future.

8 THE COURT: I'm -- well, I'm
9 not ready to say how I am going to rule on
10 this, but I must say, there is a difference
11 between the debtor in possession and the
12 debtor. And the debtor in possession is a
13 court officer, in a sense, and has fiduciary
14 responsibilities and that the debtor doesn't.

15 And I don't see why a
16 consultant being hired by the debtor in
17 possession, not the debtor, shouldn't be a
18 professional. One of the reasons being, that
19 there is a whole body of law on how you treat
20 professionals. There is probably no law on
21 how you treat, quote, "105 persons," whatever
22 you want to call them.

23 And I've never been a big
24 fan of 105, anyway, for the purpose of doing
25 something that the code otherwise doesn't

1 permit. Let me carry this on. At the bottom
2 of Page 3 there is an order that I am entering
3 that says: The debtor, the committee and the
4 legal representative, I am ordering that they
5 all acknowledge that the consultant and
6 Sylvester F. Miniter, III, are qualified to
7 act as trustee of the creditors' trust and
8 that service as consultant shall not act or be
9 construed to impair or disqualify the
10 consultant from qualifying and acting as
11 trustee of the creditors' trust. Why do I
12 order that?

13 ATTORNEY PREEFER: Your Honor,
14 this, again, was something that we developed
15 with experience. And the intent of this
16 paragraph is, that it made clear an issue that
17 people have raised in many cases and nobody
18 has really tried to get a final and clear
19 answer to and that is this: Must a trustee of
20 a creditor's trust that emerges out of a
21 bankruptcy case be a disinterested person
22 under Section 101? And while I and the
23 committee I discussed it with cannot, we have
24 included this provision to reflect a
25 confirmation that his appointment here in the

1 case, to enable the case to move forward, will
2 not be used later to say that he might not be
3 qualified because somebody now resurrects the
4 issue of this interested person.

5 THE COURT: Well, I don't like
6 to prejudge something like that. I don't like
7 a paragraph that says I am ordering somebody.
8 What's the language I am ordering?

9 ATTORNEY PREEFER: Your Honor,
10 here, here, Your Honor, let's focus on what it
11 is we are having the debtor and the legal
12 committee and a representative who are parties
13 in this case acknowledging. Now that to them,
14 this appointment does not raise interest,
15 issues of disinterestedness in the case.

16 THE COURT: Right. But I
17 don't have to order that. That is on the
18 record. They can send a letter to each
19 other. I mean, I don't want to order
20 something that the parties themselves agreed
21 on.

22 ATTORNEY DAVIS: Your Honor, I
23 agree with you as to ordering parties as to
24 how they should feel and whether they should
25 forgo argument in the future, and I would

1 acknowledge for the record now that our
2 committee would raise no objection to Mr.
3 Miniter's appointment as trustee of the trust
4 under a confirmed plan by virtue of his
5 retention at this point in the case as a
6 consultant. And I imagine that other parties
7 in the case would also stipulate the same for
8 the record.

9 I do, however, believe
10 that it is important for the record that in
11 this order it be contained in the language
12 that the Court does not disqualify Mr. Miniter
13 by virtue of his employment under this order
14 from his future employment as trustee under a
15 confirmed plan. I think that's the important
16 item that has to be included, and I agreed
17 with the Court, that you really cannot take
18 away future objections, but I give up that
19 future objection.

20 THE COURT: Why should the
21 Court tie its hands when it doesn't know what
22 may be said in the future about why a certain
23 person shouldn't be in a particular position,
24 especially, a court-appointed position? I
25 don't -- as you probably gathered from other

1 comments that I made during the day, the
2 afternoon -- I don't likes provisions that say
3 the Court cannot exercise its discretion where
4 it is granted or mandated by the Bankruptcy
5 Code.

6 ATTORNEY DAVIS: Your Honor, I
7 think in this case and in cases that we have
8 had experiences with, Mr. Miniter's retention
9 as trustee for the companies that he becomes
10 involved with is so critical that it would
11 endanger the entire plan process if he were
12 not available as trustee, and we really need
13 some assurance, that if he is retained in this
14 capacity, that it does not disqualify him
15 strictly because he was retained; not, you
16 know, if he did a bad job as a consultant,
17 that's a different matter. But strictly the
18 fact that he was retained as a consultant, I
19 think we need language saying that that would
20 not disqualify him from being trustee.

21 These plans are held
22 together very much with the trust and
23 integrity of the trustee and the trust that
24 the companies have in him to manage them well
25 under the confirmed plan. I think he would --

1 THE COURT: Well --

2 ATTORNEY PREEFER: Your Honor,
3 if I may add by clarification: What we are
4 not addressing is Mr. Miniter's performance
5 and whether his performance satisfies him
6 being designated in the future, but the issue
7 of whether serving in a role would preclude
8 him from serving in a future role.

9 THE COURT: All right. I'm,
10 since I don't have any experience of the kind
11 that Ms. Davis -- is that the name?

12 ATTORNEY DAVIS: Yes, that's
13 correct.

14 THE COURT: -- mentioned, I
15 will accept her representation that this --
16 although I don't understand it, particularly
17 -- that this is an integral part, that the
18 consultant somehow be assured that when the
19 trust is actually started that the consultant
20 will be the trustee.

21 ATTORNEY DAVIS: Yes, Your
22 Honor.

23 THE COURT: But I want it
24 limited in the order that simply says what was
25 stated, namely, that the mere -- not -- no,

1 that wouldn't be it. That the approval of the
2 consultant shall not by itself disqualify the
3 consultant from acting as trustee.

4 ATTORNEY PREEFER: Fine.

5 ATTORNEY DAVIS: Thank you,
6 Your Honor.

7 THE COURT: So, change that to
8 that effect. And you are going to take out
9 the prior paragraph anyway.

10 ATTORNEY PREEFER: Yes.

11 THE COURT: And, again, if I
12 had it as an original proposition, I wouldn't
13 use 105; I would use 327, but since that's
14 probably more an academic exercise than
15 anything else, we'll let it be 105.

16 ATTORNEY PREEFER: Thank you,
17 Your Honor. We'll redo the order, resubmit
18 it.

19 THE COURT: Okay. So, the
20 consultant is approved --

21 MR. MINITER: Thank you, Your
22 Honor.

23 THE COURT: -- with those
24 things stated on the record and a new order
25 would be presented.

1 ATTORNEY OBUCHOWSKI: Thank
2 you. Your Honor, if I could just note, all of
3 the last three motions have been served and we
4 filed certificates of service upon each of the
5 plaintiffs' firms that were noted, that we
6 have filed in our initial filings, as well as
7 all trade creditors, the banks and other
8 parties, just so that the Court is clear, that
9 we did serve approximately 170 parties.

10 THE COURT: Did I enter an
11 order approving such service or not?

12 ATTORNEY OBUCHOWSKI: We
13 served everybody that we could find at the
14 present time, Your Honor, and I just wanted to
15 make sure that that is on the record so that
16 the Court is aware that all of these matters
17 and the notice of today's hearing were served
18 upon as many parties as we possibly --

19 ATTORNEY PREEFER: Your Honor,
20 there was no limitation of service for today's
21 hearing, because you have today before you to
22 limit future service, but for today's hearings
23 all know creditors and parties in interest
24 were served with all of the motions. That's
25 the point that we are making.

1 THE COURT: Okay. Next
2 matter.

3 ATTORNEY OBUCHOWSKI: Next
4 matter that we have, Your Honor, is the
5 Amended Motion for Waiver of Claims Bar Date
6 For Asbestos Related-Personal Injury Related
7 Claimants; for Modification of Notice of
8 Commencement of Case including Section 341;
9 Notice for Limitation of Service of the Notice
10 of Commencement of Case Upon Asbestos
11 Claimants' Attorneys and for Waiver of
12 Separate Notice of Disputed Claims from
13 Asbestos Claimants.

14 I believe that we've
15 asked Your Honor for what appears to be eight
16 forms of relief in this particular motion, in
17 particular, Your Honor, and I'll take them as
18 we defined in our agenda here today. The
19 purpose of the claims bar and our seeking
20 waiver as to the asbestos personal-injury
21 claimants only is, that the type of claim that
22 they would file would not be necessarily
23 conducive or conducive to the proof of claim
24 form that presently exists. And that each of
25 these claimants generally at this point in

1 time are contested, contingent, unliquidated,
2 or disputed. They would all be required to
3 file claims. Their claims ultimately, under
4 the plan of reorganization, will be addressed
5 in the asbestos trust of which will format its
6 own form of claims processing which in this
7 instance, due to the nature and number of
8 claims involved, 35 -- in excess of 35,000
9 claims, it would create an excessive burden
10 upon the clerk's office in trying to handle
11 these number of claims as well as the fact of,
12 again, the proof of claim as filed would not
13 necessarily fit within what is a standard
14 proof of claim. I don't think the information
15 that would be provided would be that helpful
16 in coming to that claim. For that reason, we
17 are asking that, as to the asbestos
18 personal-injury claimants only, that the
19 claims bar date is waived. That's the first
20 order of relief that we are seeking here, Your
21 Honor.

22 THE COURT: The claims bar
23 date is waived.

24 ATTORNEY OBUCHOWSKI: As to
25 the asbestos personal-injury claimants only.

1 Any claimant for property damage or
2 contribution claims or codefendant claims
3 would need to file their proof of claims at
4 this time. In the history of the debtor,
5 there has been no personal or property damage
6 claims that have arisen or been filed, to the
7 best of their knowledge. As to the
8 codefendant, we will seek to have all of them
9 noticed of claims bar date as well as any
10 contribution claims that we are aware of at
11 this time. Again, as to property damage,
12 there has been no such claimants filed.

13 ATTORNEY PREEFER: Your Honor,
14 the committee had joined in this.
15 Historically in the asbestos cases, the filing
16 of a bar date notice for individual personal
17 injury claims can generate 50 to several
18 hundred thousand claims; this case being
19 smaller, probably 50 to a hundred thousand.

20 One of the things that
21 happens is -- in addition to all of the known
22 claims -- everybody who thinks they have a
23 claim, any claim they can dream of, files
24 claims also. The court becomes inundated with
25 pieces of paper that, unless a great deal of

1 money is spent to docket them and categorize
2 them, is useless paper. Moreover, the claim
3 form itself provides no useful information for
4 the reorganization case.

5 And, lastly, the
6 information that is useful in the process of
7 dealing with asbestos claims is dealt with by
8 the trust which develops claim forms
9 specifically targeted for the recognition and
10 distribution of funds to claimants. So that a
11 claims bar date for asbestos claims in a
12 bankruptcy case generates a great deal of
13 expense with no useful information and no
14 useful process.

15 And, historically, in all
16 about a handful of the 20 cases, the claims
17 bar date -- well, most, in most courts you
18 establish a bar date. In this court one is
19 established automatically unless waived. But,
20 historically, in most of the other cases no
21 bar date is established. And what happens,
22 the day after confirmation the trust develops
23 claim procedures and sends out some kind of a
24 form to claimants to fill out geared to how
25 the trust will make a distribution. Those

1 forms are returned to the trust at that time.

2 The result is, that any process in the
3 bankruptcy court will consume very valuable
4 and expensive dollars.

5 I mean, as an example, in
6 the Keene Corporation where, ultimately, the
7 Court dispensed with fixing a court claims bar
8 date but the matter was litigated because the
9 debtor was seeking to use it as litigation
10 leverage, they developed a process that, with
11 a form that called for real information about
12 a claim. It was about 30-pages long. And I
13 personally worked through the process of
14 utilizing such a form and the information and
15 implementing it through data processing and
16 discovered in that case, where it was
17 estimated there might be 2 to 300,000 claims,
18 that the process could cost four million
19 dollars. Fortunately, we didn't do it.

20 Now, it was a bigger case
21 than this, but the reality is, that the
22 information was never necessary to do it to
23 begin with for anyone. Here, even if it was
24 done more inexpensively, it would still be a
25 very, very expensive process that would

1 provide no benefit to the debtor, the
2 reorganization, or the future trust.

3 For those reasons, and
4 historically how they have been viewed in the
5 case, we would ask the Court to waive the bar
6 date for individual personal-injury asbestos
7 claims, and those would be addressed with the
8 trust.

9 THE COURT: So, those claims
10 would not be discharged?

11 ATTORNEY PREEFER: No, what
12 they are is transferred and channeled to the
13 trust. And they are barred through the
14 injunction provisions from being prosecuted
15 against the reorganized company and parties,
16 protected parties, which are the defined terms
17 under 524, but in truth, you are right; they
18 are not so much discharged as channeled.

19 ATTORNEY OBUCHOWSKI: Your
20 Honor, proceeding on. The second form of
21 relief and request in this motion is, that the
22 normal notice of commencement of case and 341
23 notice issued by the court and sent to
24 asbestos claimants should not contain a
25 deadline for filing of claims, essentially,

1 that's what we are asking the Court to order
2 the clerk's office, relative to modification
3 of the form that is sent out to those
4 claimants. Essentially, it is in conjunction
5 with the prior relief that was requested.

6 THE COURT: So, the Court will
7 set a bar date but it will exclude the tort
8 claimant?

9 ATTORNEY OBUCHOWSKI: Yes, the
10 asbestos personal-injury claimants. The third
11 relief sought here is the notice of
12 commencement of case, and the 341 notice
13 contains reference to the court internet site
14 and the availability of pleadings from that
15 location. Again, in that this is a different
16 form of case for this district, the clerk's
17 office has indicated and has made available
18 the petition and will continue to do so and
19 for the pleadings going forward to be
20 available because of the overall national
21 nature of the claimants or the parties who do
22 have interest in this case.

23 As the Court has noted,
24 although generally not sending out orders to
25 many out-of-state attorneys, in this case, in

1 view of the fact that there are claims at
2 least through a substantial number of states,
3 many of the plaintiffs' counsel may be able to
4 follow what is the status of the case through
5 their ability through the internet. And,
6 again, it is to merely put that in, the notice
7 of commencement of the case and the
8 availability of those pleadings all from the
9 website.

10 As to the fourth form of
11 relief in this motion, Your Honor, what we've
12 asked is, that the notice of commencement of
13 case and the 341 notice issued by the Court be
14 served upon the asbestos claimants' attorney
15 of record. Essentially, Your Honor, of the
16 35,000 claimants that were filed as part of
17 our schedules, the only way we were able to
18 identify them was by the law firms that were
19 representing them.

20 We do not have, as of
21 this date, exacting addresses for each of
22 those asbestos personal-injury claimants. If
23 we were to be able to obtain those addresses,
24 it poses a couple of logistical problems and
25 maybe Ms. Davis might be able to address this

1 as well to give the Court some insight. If we
2 served every one of these 35,000 claimants
3 personally, each of the firms that represent
4 them are going to be inundated with calls
5 trying to figure out exactly what is going on
6 here, in addition to the fact that that -- we
7 do not at the present time have those
8 addresses, and the only way we would be able
9 to get those addresses is, essentially, by
10 another order working the other way, is to
11 have each of these firms disclose the
12 addresses for each of these claimants.

13 The attorneys of record
14 are the only addresses that we have for those
15 claimants and that was the only method by
16 which we could serve them at this time. Ms.
17 Davis.

18 ATTORNEY DAVIS: Your Honor, I
19 would be happy to speak to that. Our files
20 contain thousands of claimants, and we often
21 find that claimants will move; we don't have
22 good addresses for them. We would also have
23 to provide some kind of list to the debtor and
24 that adds expense to us and to the debtor to
25 do notice on individual claimants, where in a

1 number of cases -- not necessarily in the case
2 of my firm -- the firms that are represented,
3 on the committee, often have powers of
4 attorney where they can vote and can make
5 decisions on settlements for their clients.
6 So, it is an unnecessary and expensive step.

7 It also, on occasion, has
8 caused us to have to activate formal phone
9 lines with operators there to take the myriad
10 of calls from the claimants who received
11 notice which they, basically, do not
12 understand. And our message to these
13 claimants is always: Send us what you have
14 received, and we will respond for you.

15 So, our thought on this
16 is -- to save the expense not only to the
17 claimants bar but also to the debtor of
18 sending out notice to these individuals -- is
19 to send notice strictly to the counsel of
20 record for those individuals.

21 ATTORNEY OBUCHOWSKI: And,
22 Your Honor, I would take interest in the issue
23 of the expense. From our perception at this
24 point for 35,000 notices, to put it in
25 perspective as to this debtor, for each and

1 every notice that would go forward it would be
2 in excess of \$17,000 for merely one piece of
3 paper going out for every single notice to
4 go. To be able to send it to the counsel of
5 record, all of the counsels of record -- at
6 this point with this mailing that we've done
7 for today's hearing it was 170 pieces of mail
8 versus 35,000. And we believe that they are
9 as equally served and understood as if we were
10 to serve each and every one of them
11 individually. Proceeding further, Your Honor
12 --

13 THE COURT: Just one question,
14 or two, I guess. This refers to "Attorney of
15 record" as if there is one, one attorney. You
16 don't mean that, right, there were
17 "attorneys," plural?

18 ATTORNEY OBUCHOWSKI: That
19 would be attorneys, plural.

20 THE COURT: And, secondly, if
21 there is any risk here, it is the debtor who
22 is taking the risk of having a claim made that
23 won't be subject to the Court's orders.

24 ATTORNEY OBUCHOWSKI: We
25 understand that, Your Honor.

1 ATTORNEY DAVIS: Yes, Your
2 Honor.

3 THE COURT: Okay.

4 ATTORNEY DAVIS: And it is
5 also, on the other hand, once the plaintiffs
6 confirm the company belongs to the claimants.
7 So, it is the company, the debtor in
8 possession, and the reorganized debtor which
9 is taking the risk. And we are willing to
10 take that risk.

11 THE COURT: In other words, at
12 the end of the road here all of the stock of
13 the debtor is going to be --

14 ATTORNEY DAVIS: Belong to the
15 plaintiffs' trust, Your Honor, yes.

16 THE COURT: -- trust?

17 ATTORNEY DAVIS: Yes, Your
18 Honor.

19 THE COURT: And the present
20 stockholders are all going to be wiped out?

21 ATTORNEY DAVIS: Yes, Your
22 Honor.

23 ATTORNEY OBUCHOWSKI: That's
24 correct.

25 ATTORNEY PREEFER: Your Honor,

1 just one more thing to give the Court some
2 more comfort, it has been the practice in the
3 past, -- I don't want to speak specifically to
4 this case, although, I think we'll end up
5 there -- that in connection with a
6 confirmation hearing we have done a
7 publication to give notice to the world to the
8 extent that somebody has been overlooked for
9 whatever error or omission that existed.

10 THE COURT: In the, all of the
11 instances that are, you are going through,
12 these have been done in some of these 20 odd
13 prior asbestos cases?

14 ATTORNEY OBUCHOWSKI: I think,
15 Your Honor, each of them, from what I can
16 gather -- and, again, my experience is limited
17 to this case. I would defer to the expertise
18 of Mr. Preefer and Ms. Davis. So that we are
19 working towards finding ways that specifically
20 assist small companies, and that in this
21 instance methods of limiting the notice
22 because of the inherent cost would be one of
23 those type of creative solutions to try to
24 address this as well.

25 ATTORNEY PREEFER: Your Honor,

1 on the bar date; when I was involved in Keene,
2 which I think was the seventeenth or
3 eighteenth, we did a survey on the bar date
4 issue as part of our litigation over it, and I
5 think we found that -- say there were 17 prior
6 cases, at the most, two or three courts had
7 ever entered orders with bar dates and they
8 had not always enforced that. The vast
9 majority had waived them, and it was waived in
10 Keene as well.

11 ATTORNEY OBUCHOWSKI: Your
12 Honor, I'll proceed further with the relief
13 that has been sought. As I have noted to the
14 Court, there is seven firms that represent
15 over 60 percent of the claimants, I believe,
16 with one of the larger firms having almost
17 8,000 claimants. What we've asked for as the
18 fifth form of relief in this order is, that
19 where there is more than one asbestos claimant
20 represented by a firm -- and, Your Honor, I
21 would note that some of the firms do have
22 multiple addresses, so we would continue with
23 the multiple addresses, but we would only need
24 to send one copy of the notice of commencement
25 of case and 341 notice unless it is all

1 requested by the firm for additional copies
2 to, say, for any future pleadings in that
3 regard.

4 Again, the reason for
5 this is: Having served as counsel for a
6 retirees' committee in which there were over
7 300 and some claims, when we received 300
8 copies of the disclosure statement and plan it
9 was a little bit overwhelming let alone other
10 notices. Aside from the other expenses, it
11 will save expense for the state not having to
12 send to the same firm 300, 500 or 800
13 notices.

14 For additional relief,
15 Your Honor, under our local Bankruptcy Rule
16 where there are disputed, contingent or
17 unliquidated claims, the local rule provides
18 that we are to file and serve upon each of
19 those claimants a notice of their disputed
20 claims. We would ask for a waiver here for
21 the same reason as noted as far as serving
22 notice of the 341 notice or waiver of the bar
23 date, and that the purpose of the notice in
24 the disputed claims, under the local rule, was
25 to make sure that that claimant knew under the

1 rules and under the code that they -- it was
2 required upon them to file a proof of claim to
3 have their claimed allowed.

4 Here, in that it relates
5 to the asbestos personal-injury claimants, for
6 us to serve each and every one of those for
7 notice of filing, claim of defeat -- it is
8 consistent with what we are already requesting
9 relief for, and that is to not have a bar
10 date.

11 Your Honor, as to further
12 relief, again, we seek to have the Court waive
13 the requirement of Bankruptcy Rule 3003(c)2
14 for the filing of a proof of claim as to these
15 asbestos personal-injury claimants, again,
16 consistent with the other relief that has been
17 requested in this order.

18 And, lastly, what we are
19 seeking is, that the methods of noticing
20 hearing, that the Court would deem those to be
21 satisfactory for the purposes of due process.
22 That's, essentially, the nature of relief that
23 we've requested in the fourth motion before
24 the Court this morning -- this afternoon.

25 ATTORNEY PREEFER: Your Honor,

1 I would like to make one comment and, Mr.
2 Obuchowski, I am going to apologize for this,
3 but I am going to ask that -- in the order,
4 generally, is the terminology "asbestos
5 claimants" and it does say in the first
6 ordered paragraph, "As defined in the
7 motion. " The motion specifies -- and the
8 importance of this will become apparent in a
9 second -- that as used in the motion, asbestos
10 claimants means asbestos-related personal
11 injury claims.

12 There are actually four
13 types of asbestos claims. There are asbestos
14 personal-injury claims, meaning, individual.
15 There are asbestos property damage claims
16 which we believe are not in this case but they
17 are category property damage. Okay, that's
18 not -- no individual has a property damage
19 claim. It says, buildings, asbestos and
20 buildings, and then there are
21 contribution/subrogation claims that may exist
22 in either personal injury or property damage
23 where, generally, a corporate defendant in
24 certain states may claim after having paid an
25 individual.

1 The motion does say it
2 very clearly and puts people on notice that
3 these waiver provisions deal with asbestos
4 personal-injury claims. It is important in
5 the case that the other three types of claims
6 be figured, and, as is our expectation, that
7 there will be no property damage claim; no
8 property damage contribution claim; there may
9 be, although we are not certain, some personal
10 injury contribution claims.

11 The order caption begins
12 by saying, "Order Granting Motions for Waiver
13 of Claims Bar Date for Asbestos-Related
14 Personal Injury Claimants" which is what, on
15 behalf of the committee, I want to see, but as
16 I look in the details of the motion it keeps
17 talking about asbestos claimants. The reason
18 I am being very careful here is, a bar date
19 means something only if the information to the
20 creditor who is barred is clear and
21 unambiguous. Not only does the supreme court
22 address that in Pioneer (phonetically), but I
23 had the unfortunate experience with a document
24 much like this in Keene where a contribution
25 creditor tried to argue that the notice didn't

1 quite meet that level.

2 So, I am going to ask Mr.
3 Obuchowski, with the Court's permission, if we
4 could redraft the order to be very clear in
5 each place that we are talking about
6 asbestos-related personal injury claims, so we
7 do not give anyone an excuse for saying they
8 didn't understand it because they were
9 confused by the document.

10 ATTORNEY OBUCHOWSKI: I would
11 have no problem with that, Your Honor.

12 THE COURT: Right. I think
13 that is a point well taken. I am having an
14 experience back in Hartford in a, nothing this
15 size, but one with many product liability
16 claims, and I have several hearings coming up
17 where, even though the lawyers did the best
18 they could to send out a notice that says you
19 have to file, several people are saying: We
20 didn't understand it. It wasn't that clear.

21 So, you can't overdo, you
22 know, the clarity of these kinds of things.
23 Mr. Purcell, you have any problem with any of
24 the requests here?

25 ATTORNEY PURCELL: Your Honor,

1 I have been through the motion for this
2 relief. Generally, I think it is under the
3 Court's authority under 9007. I don't object
4 to any of this relief because, again, of the
5 special circumstances of this case.

6 THE COURT: All right, then
7 the Court will approve the motion and the
8 corrected order will be submitted.

9 ATTORNEY OBUCHOWSKI: Again, I
10 will submit that within probably three to five
11 days, Your Honor.

12 THE COURT: Okay.

13 ATTORNEY OBUCHOWSKI: And
14 we'll serve a copy on Mr. Purcell prior to
15 transmitting.

16 THE COURT: We are running out
17 of time. I am a little bit concerned about
18 the case that I started here this morning.

19 (A discussion was held off the
20 record.)

21 ATTORNEY OBUCHOWSKI: There is
22 actually one more motion.

23 THE COURT: You have one
24 more?

25 ATTORNEY OBUCHOWSKI: One. It

1 is on limited notice, Your Honor, and that is
2 only as to future notice in this case --
3 except for matters relating to the disclosure
4 statement and confirmation hearing which we
5 will address specifically at that time -- to
6 be limited to the 20 law firms representing
7 140 or more asbestos claims. That motion was
8 served upon all of the plaintiffs' counsel of
9 record with all claims today, so that it will
10 alleviate or reduce from approximately, I
11 believe, about 130 firms -- it will reduce it
12 down to 20 firms, and those firms will
13 represent, I believe, substantially in excess
14 of 85 percent of the claims or more.

15 And any of those parties
16 that do file a notice of appearance or request
17 for service of documents, we would serve them
18 going forward. So, simply, it would put the
19 burden on them to come forward and say:
20 Please serve me, and we would be glad to do
21 so, but it is limited to only going forward to
22 the 20 firms with the largest number of
23 claims.

24 The motion also provides
25 that, again, the same issue of sending only

1 one notice for each party entering appearance
2 on behalf of an asbestos personal-injury
3 claimant. Again, the same as for those firms
4 that have 8,000 claims; we do not need to send
5 them 8,000 notices, that any future notice for
6 any entities holding unsecured payable claims
7 shall be limited to those entering appearance
8 following a subsequent motion, Your Honor. We
9 believe that that may eliminate the need for
10 any further notice to them if all trade
11 payables are paid in any event.

12 And again, lastly, that
13 service of the present motion to all 120
14 asbestos claimants' firms was sufficient by
15 mailing one copy of the motion to each of
16 them, each respective attorney of the firm.
17 And, again, the issue of due process, that our
18 efforts here and the method of limiting would
19 satisfy the method of due process. That is,
20 essentially, what has been sought and
21 designated under our agenda of the fifth
22 motion.

23 THE COURT: Mr. Purcell.

24 ATTORNEY PURCELL: Again, Your
25 Honor, we looked at this very carefully, my

1 office. No objection.

2 THE COURT: Explain one thing
3 a little bit further, --

4 ATTORNEY OBUCHOWSKI: Yes,
5 Your Honor.

6 THE COURT: -- the part about
7 the trade payables. It says, "All future
8 notice to any entities holding unsecured trade
9 payable claims of all matters in these cases,
10 except for noticing, disclosure and
11 confirmation, shall be limited to and may be
12 made by sending one notice only to each
13 party." I don't know what that means.

14 ATTORNEY OBUCHOWSKI:
15 Essentially, it is probably repetitive of what
16 we already indicated, Your Honor. We hate to
17 be -- own up to our own inadequacies, but we
18 probably grabbed the last paragraph as to the
19 number of firms for the personal injury
20 claimants and recited that again here as that
21 there would only be one notice sent if there
22 was multiple claims there. It is really not
23 applicable to the trade payables.

24 THE COURT: It is not. It
25 really has nothing to do with trade payables.

1 ATTORNEY OBUCHOWSKI: And,
2 again, it would only be limited to those who
3 filed notice of appearance.

4 THE COURT: So, take out
5 whatever it says about trade payables in the
6 order.

7 ATTORNEY OBUCHOWSKI: Again,
8 Your Honor, we believe -- it is our sincere
9 hope -- that will become a moot point
10 shortly.

11 THE COURT: Don't bank on
12 that.

13 ATTORNEY PREEFER: Your Honor,
14 in this order it should say what is limited.
15 Trade payables will receive notice only if
16 they file notice of appearance is what the
17 debtor is requesting. Limit fut --

18 THE COURT: But if --

19 ATTORNEY PREEFER: Except for
20 --

21 THE COURT: If the code says
22 in some particular thing that you have to send
23 notice to all creditors -- this says:
24 Regardless of the code, unless a lawyer has
25 entered an appearance, you don't get it.

1 ATTORNEY PREEFER: No, the
2 code says that the only notices that have to
3 be sent, Chapter 11, to all creditors is a 341
4 --

5 THE COURT: Let me cut this
6 short. There are only six, is that right, I
7 have been told only six points?

8 ATTORNEY PREEFER: At this
9 point, yes.

10 ATTORNEY OBUCHOWSKI: We can
11 live with that, Your Honor.

12 ATTORNEY PREEFER: Okay. Go
13 ahead.

14 THE COURT: So, you are going
15 to submit a revised order on that?

16 ATTORNEY OBUCHOWSKI: Yes, we
17 would.

18 THE COURT: Okay. The next
19 one you told me was off?

20 ATTORNEY OBUCHOWSKI: That's
21 correct, Your Honor.

22 THE COURT: Then you have an
23 amended motion for post-petition trade
24 payables?

25 ATTORNEY OBUCHOWSKI: That's

1 correct, Your Honor, and our reason here
2 again, Your Honor, is stemming first from the
3 necessity issues relative to the debtor's
4 relation with these trade payables. And its
5 ability to continue to maintain --

6 THE COURT: Okay. I read your
7 motion on this one. And if you are going to
8 be telling me what you said in your motion, I
9 am not convinced. These people are, must be
10 regular vendors to the debtor. If they only
11 have this amount of money for a short period
12 of time, they must do a large amount of
13 business over the years, and it is just
14 contrary to the code provisions that you
15 prepay certain pre-petition debt.

16 It is one thing to allow
17 checks that went out, that was a stretch, but
18 to actually pay, authorize preference in a
19 case that is not going to take very long, I am
20 told, I don't want to do that. And I don't
21 think you are going to lose a customer or a
22 vender. They are anxious to keep the company
23 going. Why should they lose a customer that
24 has this kind of payment record?

25 ATTORNEY OBUCHOWSKI: Well,

1 Your Honor, if I may -- and I'll try to keep
2 by the Court's comment of finishing in five
3 minutes -- if the Court would be so inclined,
4 if we adjourn this over to the November 16th,
5 at which time we put Mr. Martin on as to the
6 necessity of making these payments --

7 THE COURT: Okay. I will try
8 to keep an open mind and we'll continue it to
9 November 16th.

10 ATTORNEY OBUCHOWSKI: I think
11 that's the next date the matters are on.

12 THE COURT: So ordered.

13 ATTORNEY OBUCHOWSKI: Thank
14 you.

15 THE COURT: So, that concludes
16 --

17 ATTORNEY OBUCHOWSKI: Does it
18 for today.

19 THE COURT: Thank you very
20 much.

21 ATTORNEY OBUCHOWSKI: Thank
22 you, Your Honor.

23 ATTORNEY PURCELL: Thank you.

24 ATTORNEY PREEFER: Thank you,
25 Your Honor.

1 ATTORNEY DAVIS: Thank you.

2 THE COURT: The Court will be

3 in recess.

4 (PROCEEDINGS CONCLUDED.)

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C E R T I F I C A T E

I, Lisa M. Hindes-Moody Court

Reporter and Notary Public, do hereby certify
that the foregoing pages, numbered 4 through
82, inclusive, are a true and accurate
transcription of my stenographic notes of the
proceedings taken before me on October 25,
1999, for use in the matter of IN RE: RUTLAND
FIRE CLAY CO.

Commission Expires: 2/10/03